IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

D.B. Civil Writ Petition No.3462/1993

Zila Khanij Udyog Sangh

Versus

Union of India

Date of Order : 16/10/2006

P R E S E N T

Hon'ble The Chief Justice Shri S.N. Jha
Hon'ble Shri Justice Ajay Rastogi

Shri R.K. Mathur, for petitioner
Shri V.K. Joshi, for respondent

BY THE COURT [PER HON'BLE THE CHIEF JUSTICE] [ORAL]:

This writ petition on behalf of the Association of mine owners has been filed for quashing the notification of the Ministry of Environment and Forest, Government of India, dated 07.05.1992 putting restrictions on the mining activities by members of the petitioner association who claim to have obtained mining leases for extraction of both major and minor minerals for period of 20 years and 10 years respectively, renewable for identical periods.

The notification has been issued in exercise of powers conferred on the Central Government under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection)

Rules, 1986. Section 3(1) of the Act confers powers on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Under sub-section (2), without prejudice to the generality of the provisions of sub-section (1), such measures referred to in sub-section (1), include restriction of areas in which any industries, operations or processes or class of industries, operations or processes may not be carried out or carried out subject to safeguards. Under rule 5 of the Rules framed in exercise of powers conferred on the Central Government by Sections 6 & 25 of the Act, the Central Government is required to take into consideration various factors specified in the rule while prohibiting, restricting the location of industries and carrying on processes and operations in different areas. These factors include environmentally compatible land use and net adverse environmental impact likely to be caused by an industry, process and operation proposed to be prohibited or restricted.

By the notification impugned, restriction has been imposed on processes and operations connected among other things with new mining operations including renewal of mining leases, existing mining leases in Sariska National Parks and areas covered under the Project Tiger and/or mining being done without

permission of the competent authority. The notification states that these activities cannot be carried on in the area specified in the Table except with the prior permission of the Central Government. It would appear that the notification is in accord with Section 3 of the Act & Rule 5 of the Rules.

The submission that the notification puts a complete ban on carrying of mining activities and is, therefore, violative of the fundamental rights under Article 19(1)(g) of the Constitution appears to be totally misconceived. As seen above, the notification prohibits carrying on of certain activities without prior permission of the Central Government. The notification is thus regulatory in nature and it does not put a complete ban on the offending activities.

As a matter of fact, the controversy is covered by the order of the Supreme Court in Writ Petition [Civil] No.509/1991, Tarun Bharat Sangh Vs. Union of India & Ors., decided on 29.07.1997. The reference to the following passage from the order would suffice:

> “It is, therefore, directed that in the said core area, namely, Sariska National Park and Sariska Sanctuary no mining activity and other activities as referred to in the Notification dated May 7, 1992 should be permitted. But in respect of other areas which fall within the 866 sq. km. comprising Sariska Tiger Reserve but not covered within the core area known as Sariska National Park and Sariska Sanctuary notified under the Wild Life (Protection) Act, 1972, no mining

> activity or other activities should be permitted by the State Government of Rajasthan without the written permission of the Central Government".

On a bare reading of the above extract, it is manifest that in the specified area described as core area comprising of Sariska National Park and Sariska Sanctuary no mining activities or other activities is to be permitted at all; in respect of other areas falling within 866 sq. kms. comprising Sariska Tiger Reserve, but not covered within the said core area, known as Sariska National Park and Sariska Sanctuary as notified in the Wild Life [Protection] Act, 1972 the mining activities can be carried on with permission of the Central Government. It is pertinent to note that the direction was issued in the context of same very notification dated 07.05.1992 impugned in this case, and if we were to accept the contention of the petitioner and issue any favourable direction, it would amount to nullifying the order of the Supreme Court which we plainly enough cannot do.

We do not find any merit in the writ petition, which is accordingly, dismissed. No order as to costs.

[AJAY RASTOGI],J. [S.N. JHA],CJ.

FRBOHRA,JR.P.A.